

**EASTERN DISTRICT OF TEXAS**



CIVIL ACTION NO. 1:08-CV-81

V.L. BRISHER, *et al.*,

Defendants.

In his objections, plaintiff requests that court adopt in part his request dismiss this case without prejudice. Plaintiff requests that exhibits filed in this action be transferred to another pending action styled *Conlin v. Shields*, civil action number 1:08cv74. Plaintiff refers to exhibits to which Judge Atlas referenced in her opinion transferring this action to this court. The magistrate judge attempted to identify the documents; however, plaintiff disagrees with the magistrate judge's determination. It appears to the court that the documents requested are docketed as docket entry #3; however, to avoid any confusion, the court will direct the Clerk of

Court to copy all documents transferred to this court from the United States District Court for the Southern District of Texas and file them in civil action number 1:08cv74, retaining any originals in this action.

Additionally, Plaintiff objects to the failure to recommend refunding an initial partial filing fee paid to the United States District Court for the Southern District of Texas. After careful consideration, the court concludes Plaintiff's objections are without merit. As the magistrate judge correctly determined, this court is without jurisdiction to order the Southern District to refund such payment to Plaintiff. *See* 28 U.S.C. §§ 1914, 1915. Therefore, a recommendation from this court to refund the money, as plaintiff requests, would be improper. Accordingly, Plaintiff's objections should be overruled.

### **O R D E R**

For the reasons set forth above, Plaintiff's objections are partially **OVERRULED** and the report of the magistrate judge is **ADOPTED** to the extent it recommends dismissal without prejudice. The Clerk of Court is **DIRECTED** copy all documents transferred to this court from the United States District Court for the Southern District of Texas and file them in civil action number 1:08cv74, retaining any originals in this action. If plaintiff wishes to pursue the above-styled action, he may reinstate this case on the court's active docket by filing a request within thirty (30) days from the date of this order. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Sherman, Texas, this 10th day of September, 2008.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE